IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1761 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GSRTC - Petitioner(s)
Versus
M D DESAI - Respondent(s)

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Appearance :
MRS FALGUNI D PATEL for Petitioner(s) : 1,
MR JS BRAHMBHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 19/06/2006

ORAL JUDGMENT

1. Heard the learned Advocate, Mrs.F.D.Patel, appearing on behalf of petitioner and learned

Advocate, Mr.J.S.Brahmbhatt, appearing on behalf of respondent.

2. In the present petition, the petitioner Corporation has challenged the award passed by Industrial Tribunal, Vadodara in Reference No.63 of 1999 dated 17.1.2005, whereby, the Industrial Tribunal has set aside the punishment imposed by the Corporation against the respondent workman with a direction to pay the difference of salary to the workman.

3. Learned Advocate, Mrs.F.D.Patel, submitted that Tribunal has committed gross error in setting aside the punishment order. She submitted that initially two years increments have been stopped with cumulative effect. Thereafter, punishment has been modified in second appeal to one year increment with cumulative effect. Even that order of punishment has been set aside by the Tribunal. She also submitted that one co-employee was died, who was working in Divisional Workshop. She also submitted that from the floor while checking by the respondent workman, all

of a sudden, bus has gone to reverse and that bus was not in control by the head mechanic. It was his duty to control it. She also submitted that at the time when he entered in the bus, he should have to see that, whether support on back side of the bus has been made by the concerned employee or not. That aspect has not been taken into account by the Tribunal and Tribunal has set aside the punishment order only on the ground that no witness was examined by the Corporation to prove the negligence of the workman concerned.

4. Learned Advocate, Mr.Brahmbhatt, submitted that the bus was not taken by Head Mechanic on the floor in Divisional Workshop, but some other driver or employee of the workshop taken the bus on the floor. At that time, concerned employee has not put any support on the back side of the bus and it was his negligence and not the negligence of the head mechanic and, therefore, he submitted that Tribunal has rightly set aside the punishment.

5. I have considered the submissions made by both

the learned Advocates and have also perused the award in question. The tribunal has considered the entire matter as if that head mechanic is not liable for any misconduct. It is a duty of the head mechanic to check the vehicle when it was put on floor at workshop. It is also his duty to check while entering into the bus, whether any support has been put by concerned employee on the back side of the bus or not. That aspect has not been checked by head mechanic while entering into the bus and then, all of a sudden, bus has been reversed, as a result of which two co-employees were sandwich between bus and wall and one person has died. This being a serious misconduct committed by the respondent workman. However, Corporation has modified the punishment in second appeal from 2 years increments to 1 year increment with cumulative effect. It was a duty of the head mechanic to check the bus which has not been done by him and for that, according to my opinion, if instead of setting aside entire order of punishment, the order passed by second appellate Board imposing stoppage of one year increment with cumulative effect which would meet the ends of

justice between the parties. Accordingly, the award passed by the Tribunal is required to be modified from stoppage of two years increments to stoppage of one year increment with cumulative effect.

5. In the result, present petition is partly allowed. The award passed by the Industrial Tribunal in Reference (IT) No.63 of 1999 dated 17.1.2005 is quashed and set aside and the punishment imposed by the second appellate Board to the concerned workman is restored, namely, stoppage of one increment with cumulative effect. Accordingly, rule is made absolute to the aforesaid extent.

(H.K.RATHOD,J.)

(vipul)